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No. 83-1684

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1983

SERGIUS BRYNER and FRANCIS BRYNER, et al.
Petitioners,

vs.

SECURITY PACIFIC NATIONAL BANK, COMMERCIAL BANK OF SAN FRANCISCO, CAPITAL RESERVE LEASING CORPORATION, C.I.T. CORPORATION and LEASCO CAPITAL EQUIPMENT CORPORATION,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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RESPONDENTS' BRIEF IN OPPOSITION

The respondents, Security Pacific National Bank, Commercial Bank of San Francisco, Capital Reserve Leasing Corporation, C.I.T. Corporation and Leasco Capital Equipment Corporation, respectfully request that this Court deny the petition for writ of certiorari, seeking review of the Ninth Circuit's unpublished memorandum disposition of this case.

Having failed after a ten-month jury trial and a lengthy appeal to convince either the jury, the trial court or any of the judges of the Court of Appeals, petitioners present six issues for review. In fact, none of those issues qualifies

for review under Rule 17, Supreme Court Rules. With the exception of the first question, concerning the constitutionality of the Magistrate's Act, 28 U.S.C. § 636(c), each of the issues turns upon facts which have been found in favor of respondents by the jury, and upheld by both the trial judge and the Court of Appeals. None of the issues presented by petitioners involves a conflict between the circuits; none requires the exercise of this Court's supervisory powers, and none presents an issue of overriding importance worthy of the limited resources of this Court. The petition should be swiftly denied.

STATEMENT OF THE CASE

Petitioners have entirely ignored the rule that a reviewing court must construe the evidence in the light most favorable to the prevailing party, and instead have given an entirely one-sided version of the disputed evidence. Respondents will refrain from a lengthy review of the voluminous record produced during the course of the ten-month trial, which involved dozens of witnesses, over twenty thousand pages of transcript and thousands of exhibits. We shall briefly summarize the evidence supporting the judgments and findings below.

History of the Proceedings

The case involved more than 30 California professional and business persons who invested in a Texas oil and gas tax shelter program. The investments and related equipment were largely financed by personal unsecured bank loans and equipment leases, generally co-signed or guaranteed by the investors' spouses. The petitioners (hereinafter "investors") decided that the tax shelter program

was fraudulent and filed suit against the promoters and operators of the program, as well as against the respondent banks and leasing companies (referred to collectively as the "lenders"). The investors also stopped making their monthly loan and lease payments and the lenders therefore counterclaimed for collection on the promissory notes and equipment leases.

The parties consented in writing to have the consolidated cases referred to a United States Magistrate, who then severed the actions filed by three of the investors for preliminary trial as a "test case." CR871. The jury in that case rendered verdicts in favor of the only lender involved (Security Pacific National Bank), both as to the claims by the investors of securities fraud, common law fraud and breach of fiduciary duty, as well as on the Bank's collection counterclaims. (Appellees' Supplemental Excerpt of Record ("S/ER") 2, 3. The judgments in the Bank's favor were affirmed on appeal by the Ninth Circuit, and that case has been concluded. *Hutchins v. Freeman,* No. 80-4483 (9th Cir. 1981).

After the trial of the test case, the parties to the remaining consolidated cases reconfirmed their consent to have the cases referred to the Magistrate. CR1131. The claims of the remaining investors were tried to a new jury over a ten-month period. The jury rendered a lengthy special verdict as to each investor, separately stating its findings as to each defendant, each claim, each defense and each counterclaim. S/ER16.

The jury flatly rejected the investors' claim that the banks had become "sellers" of unregistered securities in violation of § 12(1) of the Securities Act of 1933 (15 U.S.C. § 77*l*(1)),

notwithstanding the extremely liberal jury instructions given on the issue in precisely the form proposed by the investors. S/ER14, Instr. 33,36. The trial judge and the Ninth Circuit upheld this finding, and the investors have not raised it in the petition. The jury also rejected the investors' claims of state and federal securities fraud, common law fraud and negligence against the lenders, as well as identical affirmative defenses interposed by the investors to the collection counterclaims. S/ER16. The jury did award verdicts to three investors against the banks based on claims for breach of fiduciary duty, but rejected similar claims (and defenses) raised by the other 30 investors. *Id.* The Magistrate denied the investors' motions for judgment notwithstanding the verdict (Appendix to Petition for Writ of Certiorari ("App.") 1) and awarded attorneys' fees to the lenders pursuant to their written contract provisions. App. 8-10.

The investors appealed to the Ninth Circuit on some 23 separate grounds. On the eve of oral argument, more than two years after conclusion of trial, the investors for the first time questioned the constitutionality of the reference to the Magistrate. In an unpublished memorandum, the Ninth Circuit rejected the investors' other contentions on appeal and affirmed the judgments, while reserving decision on the Magistrate question. App.4. The en banc panel of the Ninth Circuit subsequently upheld the Magistrate's Act in *Pacemaker Diagnostic Clinic, Inc. v. Instromedix, Inc.*, 725 F.2d 537 (9th Cir. 1984), whereupon the panel in this case summarily rejected the investors' constitutional challenge in an unpublished order. App.5. The investors' petition followed.

Relationship of the Lenders to the Investment Program

Plaintiffs characterize the case as involving "loans prearranged by the promoters" whereby the banks "provided capitalization for Texas operators" through "earmarked loan proceeds" which financed the "unlawful sale of unregistered securities" (Pet. 6-7 & 25). The jurors, the trial judge and the Court of Appeals all rejected this argument.

The evidence showed that the banks made ordinary commercial loans only to individuals who qualified on the basis of their personal income and assets, without regard to projected investment returns or tax benefits. RT16290-92, 18224-25. The banks never agreed to make any loans without a full credit review (RT16743, 17482-83, 17511) and turned down applicants who did not meet their normal credit standards. RT14701, 16080, 17475, 17483.

The banks did not promote or solicit for the investment program. RT11692, 16744, 17501. Indeed, they routinely advised the investors that the loans were being based on their own personal credit, that the banks did not endorse the investment program and that repayment would be required regardless of the results of the investments. RT15854, 16142, 17481-84, 17542, 18666-67. There was substantial evidence that investors did not rely upon the banks in deciding to invest. RT989, 3370, 4945, 5874.

The banks did not know or attempt to determine whether the investment offerings required state or federal securities registration, whether, in fact, they were so registered, or whether they were being properly offered. RT15054-55, 17042-43. There was uncontradicted expert testimony that banks do not customarily make such inquiries (RT19233) and that the loans here were ordinary commercial loans

which complied with normal credit standards. RT19154-55, 19233, 19263-64, 19490, 19536.

In short, the evidence amply supported the jury's explicit findings that the lenders committed no fraud and did not conspire with the investment promoters. S/ER16.

SUMMARY OF ARGUMENT

None of the six questions raised by the investors qualifies for review under the standards set forth in Rule 17, Supreme Court Rules. The disposition of the questions by the Ninth Circuit is fully consistent with applicable authorities and the unpublished memorandum creates no conflict or uncertainty requiring this Court's intervention.

The constitutionality of the Magistrate's Act, 28 U.S.C. § 636(c), has properly been upheld by the First, Second, Third and Ninth Circuits, on the basis that federal magistrates are appointed and supervised by Article III judges and because the parties have voluntarily waived any personal right to trial before a District Judge. Moreover, the unpublished order of the Court of Appeals in this case relies on prior authority without analyzing the issue, and thus provides an unsatisfactory vehicle for review.

Each of the remaining questions turns largely upon factual findings by the jury or the exercise of broad discretion by the trial court, based upon conflicting and disputed evidence. This Court has on numerous occasions noted its reluctance to disturb factual determinations in which both the District Court and Court of Appeals have concurred. See *Graver Tank & Mfg. Co. v. Linde Air Prods. Co.*, 336 U.S. 271, 275 (1949); *International Bhd. of Electrical Workers v. Foust*, 442 U.S. 42, 46 n.7 (1979) ("we . . . are unwilling to substitute our judgment for that of the jury,

District Court and Court of Appeals on this essentially evidentiary question").

In attempting to address these issues, the Court would find itself adrift in the sea of conflicting testimony, exhibits and arguments produced during the course of a ten-month jury trial. The conclusions reached by the jury, the trial judge and the unanimous panel for the Court of Appeal should be allowed to stand.

ARGUMENT

Question 1: There is no good reason for this Court to address the constitutionality of 28 U.S.C. § 626(c)

Following the en banc affirmance of 28 U.S.C. § 636(c) in *Pacemaker Diagnostic Clinic v. Instromedix, Inc.*, 725 F.2d 537 (9th Cir. 1984) the panel hearing this case summarily rejected the investors' eleventh hour challenge to the judgments on that ground. App.28. As the investors themselves point out, the First, Second and Third Circuits are in accord with *Pacemaker* and have likewise upheld the constitutionality of § 636(c). See Pet.29,n.4. There is no conflict between the circuits on this point, nor any reason for this Court to review their conclusion.

The *Pacemaker* majority concluded that § 636(c) was constitutional because the control by Article III judges over the appointment of magistrates and references of cases to them satisfies the institutional concerns of Article III (725 F.2d at 544-46), while the consent of the parties validly waives any personal protection accorded by the Article. Id. at 542-43. The Court of Appeals rejected the argument that by consenting to the reference the parties were impermissibly conferring subject matter jurisdiction over the case,

since the reference did not expand federal jurisdiction to encompass new controversies but only permitted its exercise in a different manner. Id. at 543.

The Second and Third Circuits have also thoroughly analyzed the issue and come to the same conclusion. *Collins v. Foreman*, ... F.2d ....., No. 83-7938 (2d Cir. Feb. 22, 1984) (available on Lexis Genfed Library); *Wharton-Thomas v. United States*, 721 F.2d 922 (3d Cir. 1983). The First Circuit has followed *Wharton-Thomas*. *Goldstein v. Kelleher*, ... F.2d ....., No. 83-1411 (1st Cir. Feb. 29, 1984) (available on Lexis Genfed Library). Several commentators have also reached the same conclusion. *See Wharton-Thomas, supra*, 721 F.2d at 930 n.11.

The control exercised by Article III judges and explicit consent required of the parties serve to distinguish these cases from the authorities cited in the petition. Indeed, in this case the investors *twice* consented in writing to the reference, raised no challenge to it until the eve of oral argument on the appeal, and have no basis to rescind that waiver. The question has been exhaustively, unanimously and correctly resolved by the circuits. There is no reason to review it in this case.

Question 2: The trial court acted within its discretion in the award of attorneys' fees and the investors were not denied due process

The investors were indebted to the lenders on various promissory notes and equipment leases which contained clauses providing for the recovery of attorneys' fees and costs incurred in the enforcement of the obligations. S/ER29, 30, 31, 37, 38. The assigned magistrate presided

over numerous discovery motions, pretrial proceedings and trial, had extensive first-hand experience with the efforts and abilities of counsel, received complete accountings of their hours and hourly rates (S/ER20-22) and had ample information upon which to base the fee awards.

The investors not only asserted affirmative claims against the lenders based upon a variety of federal and state claims, but also raised similar assertions as affirmative defenses to the collection counterclaims by the lenders. Thus, the Ninth Circuit concluded that the lenders had to successfully defend against all of the investors' claims, including claims under the federal securities laws, in order to enforce their promissory notes and leases. App.28-29. It therefore upheld the trial court's discretion in awarding attorneys' fees without any apportionment between defense of the investors' affirmative claims and defeat of their identical affirmative defenses. Id. *See Wagner v. Benson*, 101 Cal.App.3d 27 (1980).

California law clearly authorizes the award of attorneys' fees pursuant to a contract between the parties. Cal. Civ. Code § 1717. The investors now argue that this rule must be compromised or disregarded whenever federal claims are asserted in an attempt to avoid the contract. Pet.37. They argue further that the trial court should have conducted an evidentiary hearing and tried to ascertain the intent of the parties as to the meaning of the fee clauses when they executed the promissory notes and leases. Pet.39-42.

The award of attorneys' fees pursuant to contract is properly determined on the basis of post-trial motions. *Matter of Sparkman*, 703 F.2d 1097, 1100 (9th Cir. 1983).

Rule 43(e), F.R.Civ.P., recognizes that motions will ordinarily be decided on the basis of facts presented by affidavit, unless the trial court elects to take oral testimony. The Northern District of California has promulgated Local Rule 220-7, providing that factual contentions in opposition to a motion "shall be supported by affidavits or declarations" and that "[n]o oral testimony will be received in connection with any motion . . . unless otherwise ordered by the assigned judge." L.R. 220-7 (effective as of March 1, 1981). Thus, a leading commentary notes that the hearing of oral testimony is discretionary and that "[m]otions are usually decided on the papers . . . ." 9 Wright & Miller, *Federal Practice & Procedure* § 2416 at 378 (1971).

Rule 78, F.R.Civ.P., further authorizes the district courts to make rules providing for the submission and determination of motions without oral argument. Pursuant to that authorization the Northern District has promulgated Local Rule 220-1 permitting the trial courts to dispense with oral argument. Such a rule does not violate due process. *Morrow v. Topping*, 437 F.2d 115 (9th Cir. 1971).

Thus, it was fully within the discretion of the trial court to decide all post-trial attorneys' fee motions on the declarations, exhibits and memoranda submitted. Moreover, even if an evidentiary hearing were required under certain circumstances the investors waived any right to such a hearing this case.

In the first place, the investors' counsel actually submitted their own very substantial fee applications on behalf of the three investors who had been awarded judgments

against the banks. S/ER23. Investor Melbostad applied for an award of $22,939 in fees and costs against Commercial Bank, even though he was unsuccessful in his claims against the other lenders. Id. The two Purviance cousins, who were represented by another attorney, *each* sought $83,905 in fees and costs from the banks—much more than any of the lenders sought from an individual investor. CR1880-82. The investors' submission of these substantial fee requests certainly belies their present argument that the fee clauses had to be interpreted in a narrow manner or that inquiry was required concerning the parties' intent.

Furthermore, the investors failed to submit counter-declarations or other evidentiary material in opposition to the fee motions. S/ER24. As this Court recently noted, a party waives any right to an evidentiary hearing on an attorneys' fee application by failing to submit "*evidence* challenging the accuracy and reasonableness of the hours charged . . . or the facts asserted on the affidavits submitted" in support of the fee application. *Blum v. Stenson,* ..... U.S. ....., 57 U.S.L.W. 4377, 4378 n.5 (1984) (emphasis added). See also *Shakey's Inc. v. Covalt,* 704 F.2d 426, 435 (9th Cir. 1983) ("we have previously affirmed attorneys' fee awards supported by ample evidence without requiring an evidentiary hearing").

The investors did not properly raise any disputed issues of fact and waived any right to an evidentiary hearing. Indeed, to this day they have never presented factual opposition to the fee applications, only legal and policy arguments. There is simply no proper basis to review the trial court's discretionary award of fees in this case.

Question 3: The jury returned uncoerced verdicts and investors waived any objection to the trial court's instructions

The investors contend that the trial court demanded the numerical division of the jury in violation of *Brasfield v. United States*, 272 U.S. 448, 450 (1926). But in fact the jury volunteered its numerical division; the investors failed to object to the inquiry and later ratified it; and any error was harmless.

The Ninth Circuit concluded that "the judge did not directly ask for the numerical division" of the jury (App. 15) and that the split was volunteered by the jury foreman. RT21945, 21959. The *Brasfield* rule does not apply in those circumstances. *Bowen v. United States*, 153 F.2d 747, 752 (8th Cir.), *cert. denied*, 328 U.S. 835 (1946); *United States v. Williams*, 444 F.2d 108 (9th Cir. 1971).

Furthermore, as noted by the Ninth Circuit, the investors did not object to the trial court's inquiry and therefore waived any objection. App.26. See *Chicago, Rock Island & Pacific Railroad Co. v. Hugh Breeding, Inc.*, 247 F.2d 217, 227 (10th Cir. 1957); *Maloney v. Tunnell*, 218 F.2d 705, 709-11 (3d Cir. 1955). Indeed, the investors explicitly told the court that they endorsed the inquiry (RT21976) and cannot now complain of it. See *Marsh v. Cupp*, 536 F.2d 1287, 1291 (9th Cir. 1976).

Finally, the *Brasfield* rule is inapplicable to civil cases. *Chicago, Rock Island & Pacific R.R. Co. v. Hugh Breeding, Inc.*, 247 F.2d 217, 227 (10th Cir. 1957); *Maloney v. Tunnell*, 218 F.2d 705, 709-11 (3d Cir. 1955).

The investors further complain of the trial judge's modified *Allen* charge in which he instructed the jury, among other things, to "listen carefully to the opinion of others ... and try to come up with a verdict which of course must be unanimous" and admonished to each juror not to "surrender your honest convictions as to the weight or effect of the evidence solely because of the opinion of other jurors or for the mere purpose of returning a verdict." RT21947-48. He also cautioned that no verdict should be reached in violation of a juror's "individual judgment . . . and conscience." RT21949-50.

Such an instruction has never been disapproved by this Court, particularly in a civil case, and was given in the exact form suggested in Devitt and Blackmar, Federal Jury Practice § 18.14 (3d Ed. 1977). The Ninth Circuit found that it was not coercive and that the investors had made no objection at trial, as the cases require. App.26. See *Marsh*, supra, 536 F.2d at 1291-92; *Sanders v. United States*, 415 F.2d 621, 631 (5th Cir. 1969).

After reading the *Allen* instruction the court reconvened to respond to a note received from the jury shortly thereafter, which stated:

> We find one of our group to be domineering, irascible, contentious, arrogant and digressive to such a degree that intelligent discussion is impossible. We request advice on handling this situation.
> (RT21959).

Faced with this serious problem the trial judge stated that the jurors should "exchange views, exchange thoughts and ideas, . . . listen carefully to the opinion of others",

and "after there has been calm, deliberate, carefully reasoned discussion of the evidence, you must take your vote and try to come up with a verdict which of course must be unanimous." RT21960. The investors voiced no objection at the time. RT21962-67.

When deliberations were reconvened a hearing was held outside the jury's presence to discuss proposed further instructions to assist the jury. The investors proposed a lengthy instruction which reiterated their arguments about the legal issues and told the jury the process it should follow in its deliberations. S/ER32. The investors' proposed instruction did not address the coercion problem and, indeed, *repeated* those portions of the *Allen* charge designed to encourage an isolated juror to reassess his position. *Id.* The investors declined to support an instruction proposed by the lenders which sought to minimize any possible coercive effect of the previous charge by reiterating the individual jurors' responsibility to agree on a verdict only if their consciences permitted it. S/ER33; RT21971-73.

The Ninth Circuit properly found that the investors had waived any objection and that there was no coercion by the trial court under the circumstances. App.26. That determination was correct and does not qualify for review.

Question 4: The jury verdict was unanimous and further inquiry by the trial court was unnecessary

The investors object to the unanimity of the verdict because one juror, upon being polled about his vote, initially stated that "in order to get a unanimous vote I voted yes." RT21982. The trial court properly informed

the juror that he must give either a yes or no answer, whereupon the juror agreed unequivocally with the verdicts. RT21985.

The Ninth Circuit held that the juror's affidavit trying to explain his vote was not admissible to impeach the verdict and that his affirmance of the verdict in open court was binding. App.26. This was clearly a proper conclusion. *See* Rule 606(b) Fed.R.Evid.; *Grace Lines, Inc. v. Motley,* 439 F.2d 1028, 1031-32 (2d Cir. 1971) (juror's statement that she voted for verdict only because she understood it had to be unanimous did not impeach verdict); *Roy v. Star Chopper, Inc.,* 584 F.2d 1124, 1136 (1st Cir. 1978) (it was proper for trial court to put equivocal juror to a yes or no test as to the verdict); ABA Standards Relating to Trial By Jury (1968) (any volunteered explanation by juror of his agreement with verdict should be disregarded).

The trial court could only have interfered with the integrity of the jury process and caused confusion by interrogating the juror on the basis and meaning of his remarks. The matter was handled correctly and should not be reviewed.

Question 5: Both the jury and the trial court rejected the contention that Security Pacific had wilfully destroyed evidence

The investors neglect to point out that their theories regarding destruction of evidence by Security Pacific National Bank were soundly rejected by the jury and the trial judge, and were not considered significant by the Court of Appeals. Notwithstanding this procedural history, the investors ignore the standards for appellate review

and continue to assert their fanciful interpretation of the disputed evidentiary record. The question turns entirely on findings of fact supported by the evidence, and does not qualify for review.

As shown by the evidence it was the standard practice of Security Pacific's Special Assets Department to consolidate documents from various other parts of the Bank into a single credit file whenever a problem loan was referred for handling. RT17070, 17104-05. The reconstruction was apparent to investors' counsel, who had the opportunity to review the files and to take full discovery of the custodian. RT16099, 19766-87, 17087-123. The Bank did not destroy or throw away documents when reorganizing the files (RT17015), although some older files were routinely destroyed after the loans had been paid off. RT17105-06. As it was, the investors had dozens of complete loan files which they offered in evidence for the jury's perusal, and the Bank's independent expert called them the most complete files of their kind that he had ever seen in his 40 years of banking. RT19122-44, 19167-68.

The only "original" documents omitted from the files were certain loan reports which had been sent to the Bank's headquarters for review and had apparently been routinely destroyed. RT17091-93. However this did not "hide" the facts or deceive anyone since identical photocopies were available in the files and were offered in evidence. *See e.g.*, Pl.Ex.67A80; 76A2. The only "whiting out, masking and . . . paste-ups" (pet.11) were minor changes in status routinely entered on existing reports rather than recreating an entire new form from scratch. RT15493.

Investors counsel strenuously argued the "destruction of documents" issue to the jury (RT20370-87) and even requested and received an instruction permitting adverse inferences to be drawn against a party shown to have destroyed or concealed evidence. S/ER14, Instr.29A. If the jury had believed that Security Pacific willfully destroyed and altered documents in order to cover up its participation in a fraudulent scheme, the Bank would have been found liable for its fraud pursuant to the special jury verdicts. But the jury rejected the claims of fraud. S/ER16.

Furthermore, the investors raised the same argument in opposition to the Bank's application for attorneys' fees. S/ER24. The trial judge, who sat through all of the evidence on the issue and was able to judge the credibility of the bank officers involved, explicitly held that there had been no showing of misconduct by the Bank. ER78. The Ninth Circuit did not see fit to discuss the issue since the question of whether a party has engaged in misconduct will not be reviewed absent an abuse of discretion. See, *Wilson v. Thompson,* 638 F.2d 801, 804 (5th Cir. 1981).

Since both the jury and the trial judge concluded on a disputed record that there was no misconduct, and since that conclusion was amply supported by the record, there was little for the Ninth Circuit to add or for this Court to review.

Question 6: The trial court properly directed verdict on the investors' claims and defenses under the National Bank Act

The investors contend that it was error for the trial court to direct verdict in favor of the banks on the investors' affirmative defenses to the banks' collection counterclaims,

which defenses alleged violation of the Glass-Steagall Act, 12 U.S.C. §§ 24, 378. This contention fails for two reasons: (1) The jury found, and the Ninth Circuit affirmed, that the banks had not been engaged in the sale of the securities, therefore there was no violation of the Glass-Steagall Act (which finding is not even presented for review); and (2) the trial court held, and the Ninth Circuit affirmed, that even assuming there were violations of the Act, the investors had no standing to assert any such violations as defenses to collection of their notes.

In pertinent part, the Glass-Steagall Act (codified as part of the National Bank Act) provides that national banks may not deal in securities:

> The business of dealing in securities and stock by the Association shall be limited to purchasing and selling such securities and stock without recourse, solely upon the order, and for the account of, customers, and in no case for its own account, and the Association shall not underwrite any issue of securities or stock . . . .
>
> 12 U.S.C. § 24, Seventh.

The jury explicitly found and the Ninth Circuit affirmed that the banks in this case were not engaged in the offer or sale of the tax shelter securities to the investors. App.7-13. The investors do not request review of that holding, which was based upon substantial evidence. Thus, even if the investors' interpretation of the Glass-Steagall Act was correct, the banks clearly did not engage in prohibited conduct and the grant of directed verdict by the trial court was, at most, harmless error.

Furthermore, the Ninth Circuit relied upon an unbroken line of authority that individual debtors have no standing to assert claims or defenses based upon violations of the

National Bank Act. App.13-16. See *Thompson v. Saint Nicholas Nat'l Bank,* 146 U.S. 240, 250-51 (1892); *Union Nat. Bank of St. Louis v. Matthews,* 98 U.S. 621, 629 (1879); *Federal Deposit Ins. Corp. v. Freudenfeld,* 492 F.Supp. 763 (E.D.Wis.1980). See also *Noel Estate, Inc. v. Commercial Nat. Bank in Shreveport,* 232 F.2d 483, 485 (5th Cir. 1956). These authorities correctly recognize that the intent and purpose of the National Bank Act (including the Glass-Steagall Act) was to protect the solvency of national banks, rather than to create defenses to collection of their notes. There is no basis to review or overturn that well-established principle.

CONCLUSION

None of the questions urged by the investors is deserving of review. The petition for writ of certiorari should be denied.

Dated: May 14, 1984

Respectfully submitted,

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